

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF DELAWARE**

ROBERT SCHMIDT, individually,)	
AMY SCHMIDT, individually, h/w)	C.A. NO.
)	
<i>Plaintiffs,</i>)	
vs.)	
)	
FRANK HAMILTON, individually and)	
TRESSA THOMPSON-THOMAS,)	
individually,)	
<i>Defendants.</i>)	

COMPLAINT

Plaintiffs, Robert Schmidt and Amy Schmidt, through their counsel, David P. Cline, Esquire, say by way of Complaint that:

JURISDICTION

I. JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP

1. Jurisdiction is based on diversity of citizenship and the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.
2. Jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332.

VENUE

3. Venue lies under 28 U.S.C. Section 1391.

PARTIES

4. Plaintiff, Robert Schmidt, is and was at all times pertinent hereto a resident of the state of Delaware, residing at 30 Orchid Drive, Bear, DE 19701.

5. Plaintiff, Amy Schmidt, is and was at all times pertinent hereto a resident of the state of Delaware, residing at 30 Orchid Drive, Bear, DE 19701, and is the wife of plaintiff, Robert Schmidt.

6. Defendant, Frank Hamilton, an individual, upon information and belief, is believed at all times pertinent hereto, a resident of the state of Pennsylvania, residing at 1389 Brookcoft Lane, Boothwyn, PA 19061, Delaware County, Pennsylvania

7. Tressa Thompson-Thomas, an individual, upon information and belief, is believed at all times pertinent hereto, a resident of the state of Georgia, residing at 100 Ridge Road, Eastman, GA 31023.

COUNT I FACTS OF ACCIDENT

1. On December 21, 2005, at approximately 6:57 p.m., plaintiff, Robert Schmidt, was stopped southbound, on I-95, Vietnam Veterans Highway, in Delaware County, Pennsylvania.

2. At the same time and place, defendant, Frank Hamilton Jr., was operating his vehicle, a silver 2004 GMC Yukon, heading southbound, and operated his vehicle in a negligent, careless and/or reckless manner, causing his vehicle to violently collide into plaintiff, Robert Schmidt's vehicle.

3. At the same time and place, defendant Tressa Thompson-Thomas, was operating her vehicle, a green 1999 Pontiac Grand Prix, heading southbound, and operated her vehicle in a negligent, careless, and/or reckless manner causing her vehicle to violently collide into defendant's, Frank Hamilton vehicle, which was positioned behind the plaintiff's Robert Schmidt, vehicle, causing further injury to the plaintiff, Robert Schimdt.

4. This incident was the result of the negligence, carelessness, and /or recklessness of the defendants, Frank Hamilton and Tressa Thompson-Thomas, and caused in no manner whatsoever to any act or failure to act on the part of the plaintiff.

5. The aforesaid negligence, carelessness, and /or recklessness of the defendant, Frank Hamilton, consisted of action in which he:

a. Did operate his motor vehicle without due regard for the rights, safety and position of the plaintiff, at the time and place aforesaid;

b. Did fail to give proper and sufficient warning or the approach of the motor vehicle under his control;

c. Failed to have his vehicle under proper and adequate control at the time;

d. Did fail to adhere to the rules of the road concerning the legal distance one must keep from another vehicle in order to safely operate a motor vehicle, and in the operation of motor vehicles on public highways;

e. Did fail to maintain a proper lookout;

f. Did fail to keep his vehicle under control and violently struck the plaintiff's vehicle;

6. As a result of the negligence, carelessness, and /or recklessness of the defendant, Frank Hamilton, plaintiff, Robert Schmidt suffered serious bodily injuries including, but not limited to: brain surgery due to a hematoma on right side of skull, comatose state and an inability to resume his normal activities of daily living which may be permanent in nature.

7. The aforesaid negligence, carelessness, and /or recklessness of the defendant, Tressa Thompson-Thomas, consisted of action in which she:

- a. Did operate her motor vehicle without due regard for the rights, safety and position of the plaintiff, at the time and place aforesaid;
- b. Did fail to give proper and sufficient warning of the approach of the motor vehicle under her control;
- c. Failed to have her vehicle under proper and adequate control at the time;
- d. Did failed to adhere to the rules of the road concerning the legal distance one must keep from another vehicle in order to safely operate a motor vehicle, and in the operation of motor vehicles of public highways;
- e. Did fail to maintain a proper lookout;
- f. Did fail to keep her vehicle under control and violently struck the plaintiff's vehicle;

COUNT II MEDICAL

- 8. As a result of the negligence, carelessness, and /or recklessness of the defendants, Frank Hamilton and Tressa Thompson-Thomas, plaintiff, Robert Schmidt suffered serious bodily injuries including to, but not limited to: brain injury, requiring surgery due to a hematoma on right side of skull, comatose state and an inability to resume his normal activities of daily living which may be permanent in nature.
- 9. As a further result of the injuries mentioned above, plaintiff, Robert Schmidt, has sustained a loss of earnings and/or earnings capacity, which may continue into the indefinite future.
- 10. As a further result of the negligence of the defendants, Frank Hamilton, and Tressa Thompson-Thomas, the plaintiff, Amy Schmidt, has suffered the loss of society, aid, comfort, companionship, and consortium of her husband, plaintiff, Robert Schmidt..

WHEREFORE, Plaintiff, Robert and Amy Schmidt, demand judgment against defendants, Frank Hamilton, and Tressa Thompson-Thomas for monetary damages, property damages, pain and suffering, lost wages, attorney fees and costs of suit.

COUNT III CONSORTIUM

11. As a further result of the negligence of the defendants, Frank Hamilton and Tressa Thompson-Thomas, the plaintiff, Amy Schmidt, has suffered the loss of society, aid, comfort, companionship, and consortium of her husband, plaintiff, Robert Schmidt.

WHEREFORE, Plaintiffs, Roberts Schmidt and Amy Schmidt demand judgment against defendants, Frank Hamilton and Tressa Thompson-Thomas, for monetary damages, property damages, pain and suffering, lost wages, attorney fees and costs of suit.

DAVID P. CLINE, P.A.

BY: /s/ David P. Cline
David P. Cline, Esq. (#2681)
1300 N. Market St., Ste. 700
Wilmington, DE 19801
(302) 529-7848
Attorney for Plaintiff(s)

Dated: March 30, 2006

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <u>Robert Schmidt</u> <u>Amy Schmidt</u>	DEFENDANTS <u>Frank Hamilton and</u> <u>Tressa Thompson-Thomas</u> <u>Burthwyn, PA</u> <u>Easton, GA</u>
(b) County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>Easton, GA</u> (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
(c) Attorney's (Firm Name, Address, and Telephone Number) <u>David P. Cline, Esquire</u> <u>1300 South Market Street, Suite 700</u> <u>Wilmington, DE 19801</u> (302) 529-7848	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td><input checked="" type="checkbox"/> 1 Citizen of This State</td> <td><input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td><input type="checkbox"/> 2 Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 3 Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	<input checked="" type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2 Citizen of Another State	<input checked="" type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. 1332</u> Brief description of cause: <u>Personal Injury Auto</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY <u>None</u>	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE <u>25 March 2006</u>	SIGNATURE OF ATTORNEY OF RECORD <u>[Signature]</u>
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FOR OFFICE USE ONLY	RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06 207

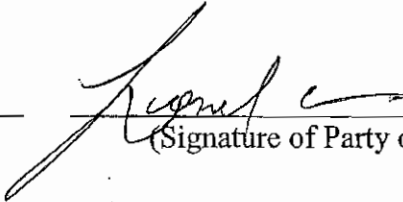
ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 3 COPIES OF AO FORM 85.

3-30-06

(Date forms issued)


(Signature of Party or their Representative)

Lonel A. Moore

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action